

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

HANNA SILBAUGH,)	
)	Plaintiff,
v.)	Civil Action No: 1:20cv252
)	
MARC NELSON, DAVID SMITH, ANTHONY)	
ATTALLA, JOHN DOE 4, JOHN DOE 5,)	<i>Electronically Filed</i>
DANIEL SPIZARNY, JOSEPH V. SCHEMBER)	
AND THE CITY OF ERIE,)	
)	
Defendants.)	

PETITION FOR REMOVAL FROM A CIVIL ACTION

AND NOW, come Defendants, MARC NELSON, DAVID SMITH, ANTHONY ATTALLA, DANIEL SPIZARNY, JOSEPH V. SCHEMBER AND THE CITY OF ERIE, by and through their counsel, Marshall, Dennehey, Warner, Coleman & Goggin and PAUL D. KREPPS, ESQUIRE and file the within Petition for Removal of a Civil Action from the Court of Common Pleas of Erie County, Pennsylvania, to the U.S. District Court for the Western District of Pennsylvania, representing as follows:

1. Plaintiff filed a Praeclipe for a Writ of Summons on June 22, 2020, captioned as "Hannah Silbaugh vs. John Doe 1, John Doe 2, John Doe 3, John Doe 4, John Doe 5, Daniel Spizarny, Joseph V. Schember and the City of Erie, Defendants, at Docket Number: 11247-2020. A true and correct copy of the Praeclipe for Writ of Summons is attached hereto and marked as Exhibit "A".

2. Plaintiff also filed a Notice of Service of Discovery in Aid of Preparation of a Complaint upon Defendant, City of Erie, attached hereto and marked as Exhibit "B".

3. See attached hereto a true and correct copy of the Court of Common Pleas of Erie County Docket as marked as Exhibit "C".

4. The Sheriff's Return of Service indicated that the Praeclipe for Writ of Summons and Interrogatories and Requests for Production of Documents directed at the Defendant, City of Erie, were both served on June 23, 2020 at 4:00 p.m. See attached hereto a true and correct copy of the Sheriff's Return of Service marked as Exhibit "D".

5. In response, Defendants filed and served the following documents on Plaintiff:

- a. Rule to File Complaint marked as Exhibit "E";
- b. Motion for Protective Order marked as Exhibit "F"; and
- c. Brief in Support of Motion for Protective Order marked as Exhibit "G".

6. The Honorable John J. Mead, Judge of the Court of Common Pleas of Erie County, entered an Order directing Plaintiff to file a Response to Defendants' Motion for Protective Order within ten days. See attached hereto a true and correct copy of Judge Mead's Order marked as Exhibit "H".

7. Plaintiff then filed the following documents with the Court:

- a. Civil Complaint marked as Exhibit "I"; and
- b. Motion to Amend Caption marked as Exhibit "J".

8. Judge Mead entered an Order granting Plaintiff's Motion to Amend the Caption attached hereto and marked as Exhibit "K".

9. Upon review of the Complaint, it is clear that jurisdiction in this matter lies with this Court as, *inter alia*, Plaintiff alleges in Count III of the Complaint (Paragraphs 47 through 53) that the Defendant Police Officers violated her First, Fourth and Fourteenth Amendment Rights regarding unreasonable seizure, substantive due process and excessive force. See Exhibit "I" at Paragraphs 47 – 53.

10. In addition, Plaintiff alleges in Count IV that Chief Spizarny, Mayor Schember violated her First, Fourth and Fourteenth Amendment Rights which are in the nature of a *Monell* claim. See Exhibit "H" at Paragraphs 54 – 63.

11. This Court therefore has original jurisdiction of Plaintiff's claims pursuant to 28 U.S.C. § 1331 and 28 U.S. C. § 1343.

12. This action is thereby removed to this Court pursuant to the procedures authorized by 28 U.S.C. § 1441 and is removed within the time permitted under 28 U.S.C. § 1446.

13. Notice of the filing of the Removal has been provided this same date to Plaintiff through her counsel as well as the Court of Common Pleas of Erie County, Pennsylvania. See attached hereto a true and correct copy of the Notice of Filing of Petition for Removal marked as Exhibit "L".

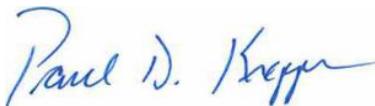
WHEREFORE, Defendants, MARC NELSON, DAVID SMITH, ANTHONY ATTALLA, DANIEL SPIZARNY, JOSEPH V. SCHEMBER AND THE CITY OF ERIE,

respectfully request this Honorable Court to remove the above-captioned action pending in the Court of Common Pleas of Erie County, Pennsylvania, at Case Number: 11247-2020 to the United States District Court for the Western District of Pennsylvania.

Respectfully submitted,

**MARSHALL, DENNEHEY, WARNER,
COLEMAN & GOGGIN**

BY:



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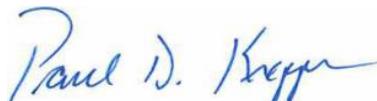
CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing *Petition for Removal from a Civil Action* has been served upon the following party of record this 27th day of August, 2020, via U.S. First Class Mail, postage prepaid:

**Timothy D. McNair, Esquire
McNAIR LAW OFFICES, PLLC
821 State Street
Erie, PA 16501**

**MARSHALL, DENNEHEY, WARNER,
COLEMAN & GOGGIN**

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